

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA**

**ZURICH AMERICAN INSURANCE
COMPANY,**

Plaintiff,

vs.

**JUNIORETTE GRIFFIN SMITH,
as administratrix of the estate of
Roger Dale Smith
Defendant.**

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CASE NO.: 2:07CV216-MEF

MOTION TO DISMISS

COMES NOW the Defendant, Juniorette Griffin Smith, as Administratrix of the Estate of Roger Dale Smith, by and through her attorney of record, Christopher M. Sledge and submits this motion to dismiss pursuant to Rule 12 (b) (1) for lack of subject matter jurisdiction and shows the following in support thereof:

1. This Honorable Court lacks diversity of citizenship as this matter is not between citizens of different States as required by 28 U.S.C. § 1332 (a)(1).

2. Plaintiff in paragraph three of its complaint alleges correctly that Defendant is a “resident of Andalusia, Alabama.” “Defendant has been appointed by the Probate Court of Covington County, Alabama, as the administratrix of the estate of Roger Dale Smith, deceased. Roger Smith was also a resident of Andalusia, Alabama, prior to his death.”

3. Plaintiff’s complaint arises out of a cause of action for underinsured and/or uninsured motorist coverage sold by Plaintiff, Zurich American Insurance Company, to Boan Contracting Company, Inc. of Greenville, Alabama. (Plaintiff’s Complaint paragraph 1 & 6)

4. Boan Contracting Company, Inc. of Greenville, Alabama is an Alabama Corporation with

its principal place of business in Greenville, Alabama, having been incorporated in Alabama in 1960.

5. 28 U.S.C. § 1332 (c)(1) provides that “a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, *except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insurer has been incorporated and of the State where it has its principal place of business... .*” Emphasis added.

6. In the present case before this Honorable Court, the cause of action arises out of a dispute between an insurer, Plaintiff Zurich American Insurance Company, of a policy or contract of insurance to which the insured, Boan Contracting Company, Inc., is not joined as a party-defendant. Therefore, pursuant to 28 U.S.C. § 1332 (c)(1) Plaintiff, Zurich American Insurance Company, shall be deemed a citizen of the State of which the insured, Boan Contracting Company, Inc. is a citizen. Pursuant to 28 U.S.C. § 1332 (c)(1), Boan Contracting Company, Inc. is deemed a citizen of the State of Alabama . Therefore, Plaintiff, Zurich American Insurance Company, is deemed a citizen of the State of Alabama and the cause of action is not between citizens of different States as required by 28 U.S.C. § 1332 (a)(1).

Wherefore, the Plaintiff has failed to meet the jurisdictional requirements necessary pursuant to 28 U.S.C. § 1332 (a) and this matter must be dismissed for lack of subject matter jurisdiction.

Respectfully Submitted,

/S/ Christopher M. Sledge
Christopher M. Sledge (SLE005)
WOODARD, PATEL & SLEDGE
1213 East Three Notch Street
Andalusia, Alabama 36420
(334) 222-9115

CERTIFICATE OF SERVICE

I, Christopher M. Sledge, do hereby certify that I have this day served a true and correct copy of the above foregoing by mailing the same by U.S. Mail, postage prepaid to the following:

Vernon L. Wells, II
One Federal Place
1819 5th Ave. North, Suite 1100
Birmingham, AL 35203

DONE this 20th day of April, 2007.

/S/ Christopher M. Sledge
Christopher M. Sledge